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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,647	12/02/2003	William J.B. Brown	01621.83623-002	4521

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EXAMINER

PATTERSON, MARIE D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/725,647	Applicant(s) BROWN, WILLIAM J.B.	
	Examiner Marie Patterson	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-6 and 8-12 is/are rejected.
- 7) ☒ Claim(s) 2,3 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/29/05, 12/10/04, 3</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Applicant's election without traverse of Group I in the reply filed on 6/16/05 is acknowledged.

Claim Rejections - 35 USC § 112

2. Claims 5 and 8-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 5, 8, and 10 the phrase "substantially only in at least one of..." and/or "substantially only at least one of" is confusing, vague, and indefinite. It is not clear what structural limitations applicant intends to encompass with such language.

In claim 12 the phrase "said flange" is confusing, vague, and indefinite because it is not clear which previously recited flange applicant is referring to.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jayne (2272373) in view of Gilkerson (1785410).

Jayne shows a shoe comprising an upper (21), an insole (22) with a rib (28"), a welt (31), a midsole (23), and an outsole (24) with a upwardly extending wall (the front of the heel shown in figures 1, 10, and/or 12) substantially as claimed except for a heel cradle.

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Gilkerson teaches providing a heel cradle (29, figure 2). It would have been obvious to provide a heel cradle as taught and shown by Gilkerson in the shoe of Jayne to provide support and stability to the heel of the foot.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 5, and 6 above, and further in view of either Cretinon (6000148) or Buccianti (5845420).

Jayne as modified above shows a shoe substantially as claimed except for the outsole having a flange in the arch region of the shoe. Either Cretinon or Buccianti teaches providing a flange in the arch region of an outsole. It would have been obvious to provide an arch region flange in the outsole as taught by either Cretinon or Buccianti in the shoe of Jayne as modified above to increase support and stability for the arch of the wearer.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jayne (2272373) in view of either Cretinon (6000148) or Buccianti (5845420).

Jayne shows a shoe comprising an upper (21), an insole (22) with a rib (28"), a welt (31), a midsole (23), and an outsole (24) with a upwardly extending wall (the front of the heel shown in figures 1, 10, and/or 12) substantially as claimed except for the outsole having a flange in the arch region of the shoe. Either Cretinon or Buccianti teaches providing a flange in the arch region of an outsole. It would have been obvious to provide an arch region flange in the outsole as taught by either Cretinon or Buccianti in the shoe of Jayne to increase support and stability for the arch of the wearer.

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7. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 8 above, and further in view of Gilkerson (1785410).

Jayne as modified above shows a shoe substantially as claimed except for a heel cradle. Gilkerson teaches providing a heel cradle (29, figure 2). It would have been obvious to provide a heel cradle as taught and shown by Gilkerson in the shoe of Jayne as modified above to provide support and stability to the heel of the foot.

Allowable Subject Matter

8. Claims 2, 3, and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 11 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (703) 872-9306 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

Marie Patterson
Primary Examiner
Art Unit 3728

